

EXHIBIT C

3 pages

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al,)

Defendants.)

- - - - -

VOLUME I OF THE VIDEOTAPED
DEPOSITION OF BERTON FISHER, PhD, produced as a
witness on behalf of the Defendants in the above
styled and numbered cause, taken on the 3rd day of
September, 2008, in the City of Tulsa, County of
Tulsa, State of Oklahoma, before me, Lisa A.
Steinmeyer, a Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the
State of Oklahoma.

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918-587-2878

1	A P P E A R A N C E S	1	I N D E X
2		2	
3	FOR THE PLAINTIFFS: Mr. Richard Garren	3	W I T N E S S P A G E
4	Attorney at Law	4	BERTON FISHER, PhD
5	502 West 6th Street	5	Direct Examination by Mr. George 6
6	Tulsa, OK 74119	6	
7	FOR TYSON FOODS: Mr. Robert George	7	Signature Page 325
8	Attorney at Law	8	Reporter's Certificate 326
9	2210 West Oaklawn Drive	9	
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11	FOR CARGILL: Ms. Theresa Hill	11	
12	Attorney at Law	12	
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16	FOR SIMMONS FOODS: Mr. John Elrod	16	
17	Attorney at Law	17	
18	211 East Dickson Street	18	
19	Fayetteville, AR 72701	19	
20	FOR PETERSON FARMS: Mr. Scott McDaniel	20	
21	Attorney at Law	21	
22	320 South Boston	22	
23	Suite 700	23	
24	Tulsa, OK 74103	24	
25	FOR GEORGE'S: Mr. Woodson Bassett	25	
	Attorney at Law		
	221 North College		
	Fayetteville, AR 72701		
	FOR CAL-MAINE: Mr. Robert Sanders		
	Attorney at Law		
	2000 AmSouth Plaza		
	P. O. Box 23059		
	Jackson, MS 39225		
	(Via phone)		
	2		4
1	FOR WILLOW BROOK: Ms. Jennifer Griffin	1	(Whereupon, the deposition began at
2	Attorney at Law	2	9:04 a.m.)
3	314 East High Street	3	VIDEOGRAPHER: We are now on the Record for
4	Jefferson City, MO 65109	4	the deposition of Berton Fisher. Today is September
5	(Via phone)	5	3rd, 2008. The time is 9:05 a.m. Would counsel 09:04AM
6		6	please identify themselves for the Record?
7		7	MR. GARREN: Richard Garren for the State
8		8	of Oklahoma.
9		9	MR. GEORGE: Robert George for the Tyson
10		10	defendants. 09:05AM
11		11	MR. McDANIEL: Scott McDaniel for Peterson
12		12	Farms, Inc.
13		13	MR. ELROD: John Elrod for Simmons.
14		14	MR. BASSETT: Woody Bassett for the
15		15	George's defendants. 09:05AM
16		16	MS. HILL: Theresa Hill for Cargill, Inc.,
17		17	and Cargill Turkey Production, LLC.
18		18	VIDEOGRAPHER: And on the phone?
19		19	MS. GRIFFIN: Jennifer Griffin for Willow
20		20	Brook Foods. 09:05AM
21		21	MR. SANDERS: Bob Sanders for the Cal-Maine
22		22	defendants.
23		23	VIDEOGRAPHER: Thank you. The witness may
24		24	be sworn in.
25		25	BERTON FISHER, PhD
	3		5

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<p>1 methodology compares with actual numbers prior to 2 2002?</p> <p>3 A Not with actual numbers, but based upon the 4 2002 records, it is pretty darned good.</p> <p>5 Q It's pretty good for one year, 2002; correct? 12:11PM</p> <p>6 A Right, and the fact that it was -- you know, 7 it might be fortuitous, but it's unlikely that it's 8 that fortuitous.</p> <p>9 Q Did you read the qualifiers that the 10 defendants placed on those bird population numbers 12:12PM 11 and estimates?</p> <p>12 A Where you said you didn't know either?</p> <p>13 Q No. Did you read the qualifiers?</p> <p>14 A Did I read the qualifiers?</p> <p>15 Q Yes. 12:12PM</p> <p>16 A I'm sure I did read the qualifiers. I mean, 17 certainly when you are dealing with large numbers of 18 animals or large numbers of anything else, there 19 will be errors in estimates, but finding for one 20 year a concordance that's within 10 percent is 12:12PM 21 pretty remarkable, having spent a lot of my life 22 looking at large numbers of things from different 23 estimation points of view.</p> <p>24 Q Dr. Fisher, with respect to the bird 25 population or production, rather, estimates in Table 12:12PM 134</p>	<p>1 identified by that historical work.</p> <p>2 Q Well, based on your review of that historical 3 work, what integrators that are not at the table in 4 this lawsuit were involved in the production of 5 poultry back in the '80s, '70s, '60s or '50s? 12:14PM</p> <p>6 A I think everybody is at the table. There may 7 be outfits that are currently moribund. I don't 8 know for sure.</p> <p>9 Q I'm sorry, currently what?</p> <p>10 A They're currently gone; they're dead. I've 12:14PM 11 not made that careful analysis to look at who was in 12 the past and who was out in the past.</p> <p>13 Q So you weren't trying to present, were you, 14 Dr. Fisher, Table No. 3 as a reflection of the 15 presence of the integrators named as defendants in 12:14PM 16 this lawsuit prior to 2002?</p> <p>17 MR. GARREN: Object to form.</p> <p>18 A Well, this table is just what it says it is. 19 It's estimated poultry production. It has been -- 20 it does not attach itself to specific entities which 12:15PM 21 produce that poultry. That information specifically 22 I did not have.</p> <p>23 Q Let's go to Opinion No. 7, which I'll for the 24 Record read. The amount of waste generated by 25 poultry within the Illinois River watershed has 12:15PM 136</p>
<p>1 No. 3, how did you allocate the USDA county 2 statistics between integrators named in the lawsuit 3 and those who are not?</p> <p>4 MR. GARREN: Object to form.</p> <p>5 A Well, there was no allocation made in the -- 12:13PM 6 among integrators in past years.</p> <p>7 Q So you cannot tell the court or me with 8 respect to 1964 in your estimate of 62 million 9 birds, how many of those birds were raised by the 10 defendants that are named in this lawsuit? 12:13PM</p> <p>11 MR. GARREN: Object to form.</p> <p>12 A No.</p> <p>13 Q I assume that would be true with respect to 14 any year I picked from Table 3; is that correct?</p> <p>15 A I think that would be fair, and pretty much 12:13PM 16 neither can anyone else.</p> <p>17 Q Did you investigate the extent to which in 18 prior years, prior to 2002, there were other 19 integrators operating in the Illinois River 20 watershed? 12:13PM</p> <p>21 A Only with respect to the historical work that 22 was done in Hills and Hollers. Business 23 organizations change over time, but it would appear 24 that the primary integrators were individuals or 25 companies acting as integrators are pretty well 12:14PM 135</p>	<p>1 increased since at least 1950. Did I correctly read 2 your opinion?</p> <p>3 A You did.</p> <p>4 Q Okay. The only authority that you cite or 5 support for Opinion No. 7, if I've read your report 12:15PM 6 correctly, is the expert report of one of the other 7 experts retained by Motley Rice, Bernie Engel; 8 correct?</p> <p>9 A That's true, and by reference I would 10 incorporate the referencing material or the 12:16PM 11 underlying referenced material he used in his 12 report, which I would have -- could have cited at 13 great length and with a bigger footnote.</p> <p>14 Q Dr. Fisher, what independent scientific or 15 statistical analysis did you complete to support 12:16PM 16 Opinion No. 7?</p> <p>17 A The analysis was the number of birds has 18 increased by a substantial fraction from around 12 19 million in 1950 or -- around 12 million in 1950 to 20 around 150 million or 152 million in 2002. So 12:16PM 21 number of birds has gone up.</p> <p>22 The information that I have reviewed 23 concerning the size of birds, average size of bird 24 coming to market, I combined with, you know, feed 25 efficiency information, since feed efficiency has 12:16PM 137</p>

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